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10/086,273	02/20/2002	Rajendra R. Damle	M-9927-1P US	4840

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EXAMINER

COULTER, KENNETH R

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/086,273

Applicant(s)

DAMLE, RAJENDRA R.

Examiner

Kenneth R. Coulter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 1-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 1 recites a single means or step. Under 35 U.S.C. § 112, first paragraph, the enabling disclosure of the specification must be commensurate in scope with the claim under consideration. The claim recites a single means or step and hence it covers every conceivable means for achieving the stated result, while the specification discloses at most only those means known to the inventor. Therefore, claim 1 is rejected under 35 U.S.C. § 112, first paragraph. See M.P.E.P. §§ 2164.08(a), 706.03(n), and 706.03(z). *In re Hyatt*, 218 USPQ 195 (CAFC 1983).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. § 112, second paragraph as being vague and indefinite because it recites only a single means and thus encompasses all possible means for performing a desired function. See

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M.P.E.P. §§ 706.03(c), 706.03(n), and 706.03(z). *In re Hyatt*, 218 USPQ 195 (CAFC 1983).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1 – 19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20 - 86 of copending Application No. 10/936,087. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following mapping.

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Claim 1 of the present Application maps closely to claim 20 of 10/936,087.

Claim 2 of the present Application maps closely to claim 21 of 10/936,087.

Claim 3 of the present Application maps closely to claim 24 of 10/936,087.

Claim 4 of the present Application maps closely to claim 25 of 10/936,087.

Claim 5 of the present Application maps closely to claim 30 of 10/936,087.

Claim 6 of the present Application maps closely to claim 30 of 10/936,087.

Claims 7 – 19 of the present Application similarly map to claims 20 – 86 of 10/936,087.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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8. Claims 1 – 6, 9, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Talbot et al. (U.S. Pat. No. 6,697,381) (Packet Channel Architecture).

8.1 Regarding claim 1, Talbot discloses a frame structure comprising:
super-channel information (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 - 45).

8.2 Per claim 2, Talbot teaches the frame structure of claim 1, wherein
said super-channel information comprises a super-channel identifier and
said super-channel identifier identifies a super-channel (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 – 45; col. 5, lines 33 - 45).

8.3 Regarding claim 3, Talbot discloses the frame structure of claim 2, further
comprising:
sub-channel information (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 – 45; col. 5, lines 33 - 45).

8.4 Per claim 4, Talbot teaches the frame structure of claim 3, wherein said
sub-channel information comprises:
a sub-channel identifier, wherein said sub-channel identifier identifies a
sub-channel (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 – 45; col. 5, lines 33 - 45).

8.5 Regarding claim 5, Talbot discloses the frame structure of claim 4, wherein said super-channel information further comprises:

a sub-channel bitmap, wherein each bit in said sub-channel bitmap represents an operational state of a corresponding sub-channel (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 – 45).

8.6 Per claim 6, Talbot teaches the frame structure of claim 5, wherein said sub-channel bitmap comprises:

a bit corresponding to an operational state of said sub-channel (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 – 45; col. 5, lines 33 - 45).

8.7 Regarding claim 9, Talbot discloses the frame structure of claim 4, further comprising:

alternate super-channel information, wherein said super-channel information comprises an alternate super-channel identifier and said alternate super-channel identifier identifies an alternate super-channel (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 5, lines 33 - 45).

8.8 Per claim 18, Talbot teaches the frame structure of claim 4, further comprising:

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sub-channel state information, wherein said sub-channel state information conveys a state of said sub-channel (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 – 45; col. 5, lines 33 - 45).

8.9 Regarding claim 19, Talbot discloses the frame structure of claim 18, wherein said sub-channel state information conveys a state of a connection between a far-end transmitter and a near-end receiver over said sub-channel (Abstract; Figs. 4, 4A, 4B, 4C, 4D; col. 2, lines 39 – 59; col. 3, lines 37 – 45; col. 5, lines 33 - 45).

Response to Arguments

9. Applicant's arguments filed 1/9/06 have been fully considered but they are not persuasive.

9.1 Applicant argues that a super-channel of the present Application is a “link between two network elements ... that includes a number of sub-channels that carry data transmission between the couple network elements.”

Applicant states that “Talbot fails to discern the existence of super-channels ...”.

Examiner disagrees.

Talbot clearly defines a super-channel as a channel link between two network elements (Fig. 1; col. 2, lines 39 – 53).

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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